



WHD-OL-1987-

December 31, 1987

NAME\*

This is in response to your communication of December 7 in behalf of Commissioner NAME\* of NAME\* County, NAME\*. Commissioner NAME\* is concerned about the application of the Fair Labor Standards Act (FLSA) to the chief deputy in the NAME\* County Sheriff's Department. Commissioner NAME\* feels that this individual is excluded from the monetary provisions of FLSA under section 3(e) (2) (C) as a member of the sheriff's "personal" staff.

The FLSA is the Federal law of most general application concerning wages and hours of work. This law requires that all covered and nonexempt employees be paid not less than the minimum wage of \$3.35 an hour and not less than one and one-half times their regular rates of pay for all hours over 40 in a workweek. The provisions of FLSA apply to all employees of State and local governments except to those who are specifically excluded in section 3(e) (2) (C) and to those who may qualify for exemption from the minimum wage and/or overtime pay provisions of FLSA.

In response to Commissioner's NAME\* inquiry, the NAME\* Wage and Hour Area Office advised him that it appeared that the chief deputy would be considered a member of the personal staff of the NAME\* County Sheriff. However, Commissioner NAME\* was cautioned that if the individual in question spent the majority of his time functioning as a law enforcement employee carrying out official duties such as working a shift or a patrol beat as any other deputy, the chief deputy would not be considered a member of the sheriff's "personal" staff. In addition, the Commissioner NAME\* was furnished a copy of an opinion from this office on a similar issue, which concludes that deputy sheriffs discharging the official duties of an elected sheriff are not serving as "personal" staff members and would not be excluded from FLSA.

The fact that the chief deputy is hired, supervised, and fired by the sheriff is not tantamount to being on the sheriff's "personal staff." The issue of whether the chief deputy is a member of the sheriff's personal staff must be resolved by "a careful examination of the nature and circumstances of the [chief deputy's] role in the Sheriff's Department." Where a chief deputy performs the same general law enforcement functions as the other deputies, the chief deputy is not a member of the sheriff's personal staff. See Brewster v. Barnes, 788 F.2d 985, 989-991 (4<sup>th</sup> Cir. 1986).

In light of the above, we must reiterate the advice given to Commissioner NAME\* with respect to the chief deputy. However, we also wish to point out that FLSA contains several exemptions

or exceptions from its overtime pay provisions specifically enacted for law enforcement employees of public agencies. These provisions are discussed in detail in sections 553.200 through 553.216 of Regulations, 29 CFR Part 553 (copy enclosed). Further, FLSA provides that public employees, who are subject to the law's overtime pay provisions, may be furnished compensatory time off in lieu of overtime compensation in cash. See sections 553.20 through 553.28 of Part 553.

We trust that the above is responsive to your inquiry. However, if I can be of further assistance in this matter, please do not hesitate to contact me. Your correspondence is returned herewith as you requested.

Sincerely,

Paula V. Smith  
Administrator

\*Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b) (7).